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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,439	06/26/2003	Subodh K. Raniwala	006943.00395	2930
66811 7590 02/26/2009 BANNER & WITCOFF, LTD. and ATTORNEYS FOR CLIENT NO. 006943 10 SOUTH WACKER DR. SUITE 3000 CHICAGO, IL 60606			EXAMINER ELOSHWAY, NIKI MARINA	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 02/26/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/606,439

Applicant(s)

RANIWALA, SUBODH K.

Examiner

NIKI M. ELOSHWAY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2008.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-43, 58-65 and 67-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 72-74 is/are allowed.
- 6) ☒ Claim(s) 30-38, 41, 43-58, 60-63, 65, 67 and 69-71 is/are rejected.
- 7) ☒ Claim(s) 39, 40, 42, 59, 64, 68, 76 and 77 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 63, 65, 67 and 69-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Zingle et al. (U.S. 5,596,814). Zingle teaches a container discussed in Example 4, having a body (the combination of the container and the large stopper), with an open mouth (on the container) and a through going hole (on the stopper), a closure capping the body (the overcap), a membrane 14 and an air tight seal (the smaller stopper).

Regarding claims 69 and 70, the body can be comprised of the container and large stopper. The opening of the container is the open mouth and the through hole of the large stopper is the hole with inner and outer ends.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 30, 32, 38 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zingle et al. (U.S. 5,596,814) in view of Andrews (U.S. 4,363,420). A container, shown in figure 5, comprising a container body 32, a closure 10 capping the body and a hydrophobic air permeable membrane 14 secured

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to the inner surface of the closure 10. The closure has a through-going hole opening at inner and outer ends thereof into respective inner and outer surfaces of the at least one of the closure and body. The air tight seal is element 24 and it seals the outer end of the hole once the freeze dry process is complete. The air tight seal is pushed down to seal the outer end of the hole permanently. However, the air tight seal is not permanently bonded to the closure.

Andrews teaches that it is known to seal a hole with a seal that is permanently bonded to the opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Zingle et al. with the air tight seal 24 being permanently bonded in the opening, as taught by Andrews, in order to prevent accidental removal of the air tight seal.

5. Claims 30-38, 41, 43, 58 and 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (U.S. 5,522,155) in view of Zingle et al. (U.S. 5,596,814) and Andrews (U.S. 4,363,420). Jones teaches a container 1, 10 having a body 1 and a closure 10. The closure has a through going hole 14, with a hydrophobic membrane 30 secured to the inner end and an air tight seal closing the outer end.

Jones teaches the claimed invention except for the air tight seal being permanently bonded. Zingle et al. teach that it is known to provide a container with an air tight seal which is permanently attached to the closure. Andrews teaches that it is known to seal a hole with a seal that is permanently bonded to the opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Jones with the air tight seal being permanently bonded to the closure, as taught by Zingle et al. and Andrews, in order to prevent venting once initial venting is complete and in order to prevent accidental removal of the air tight seal.

Regarding claims 38, 41 and 43, the modified device of Jones teaches the claimed invention except for the coating or adhesive of the seal. Zingle et al. teach that it is known to provide a container with coating on a seal (see col.5 lines 41-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Jones with the air tight seal having a

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coating/adhesive, as taught by Zingle et al., in order to securely fasten the seal within the opening and create an adhesive bond between the seal and closure.

Regarding claims 31, 61 and 67, Jones teaches the claimed invention except for the air tight seal terminating flush with the outer surface of the closure. Zingle et al. teach that it is known to provide a container with an air tight seal which terminates flush with the outer surface of the closure (see element 24 which is seated within element 22 of the closure). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Jones with the air tight seal terminating flush with the outer surface of the closure, as taught by Zingle et al., in order to securely fasten the seal within the opening and prevent unintentional removal of the seal.

Regarding claim 37, it further would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Jones with the hole being between 50 and 100 microns, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

6. Claims 39, 40, 42, 59, 64, 68 and 75-77 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 72-74 are allowed.

Response to Arguments

8. Applicant's arguments filed September 15, 2008 have been fully considered but they are not persuasive. Regarding the closures of Zingle and Jones, small stoppers allow for venting during the freeze

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drying process. The stoppers are then pushed down to seal the container and prevent additional venting. These stoppers are to remain in place permanently. The containers are transported in the completely sealed condition and then the container can be opened by removing the large stopper (with the small stopper remaining attached to the large stopper).

9. Regarding claim 63, the Zingle container assembly meets the claim because the body may be comprised of the combination of the container and large stopper structures, such that the container has the open mouth and the large stopper has the through going hole. When interpreted in this way, Zingle meets the limitations of the claims.

10. Applicant's arguments with respect to "permanently bonded" limitation have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloschway whose telephone number is 571-272-4538. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
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nme

/Anthony D Stashick/
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